



Compliance and Enforcement Policy:

**National Forest Act, 1998
&
National Veld And Forest Fire Act, 1998**

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SUMMARY

1. In recognising the current status of non-compliance with the National Forests Act and the National Veld and Forest Fire Act and its inability to enforce the law according to the legislative requirements, the Department is planning to implement a more effective and holistic compliance and enforcement model, defined as strategic and cooperative enforcement.
2. The model presents a shift away from enforcement that is reliant on traditional detection methods by introducing innovative and alternative compliance and enforcement options.
3. Compared with the alternatives of withdrawal, zero tolerance, continuing the present way, the new model of strategic and cooperative enforcement presents an affordable and effective way of streamlining and securing regulatory compliance of the two Acts.
4. The model has a strong emphasis on cooperative governance and cooperative enforcement to improve the enforcement competency of the Department and ensure the paramount use of enforcement resources.
5. A model of strategic risk management will guide and determine strategic compliance and enforcement activities and strategies.
6. A mix of preventative and enforcement-strengthening measures together will be used to ensure maximum compliance and to prevent criminal activities.
7. Criminal enforcement will be used as a matter of last resort and in line with national and local enforcement plans and priorities.

INTRODUCTION

Purpose of the policy

8. This document is the policy of the Department of Water Affairs and Forestry regarding the achievement of compliance among South Africa's people with the provisions of the National Forests Act (no. 84 of 1998) and the National Veld and Forest Fire Act (no. 101 of 1998).
9. The policy responds to a situation where there is steady loss of forest resources in South Africa, and an unacceptable level of veldfire risk, despite the regulative provisions in these Acts. This situation contributes to a loss of natural-resource-based livelihoods opportunities among poor people, as well as undermines development. As a result, South Africa is experiencing environmental degradation as well as lost livelihood and enterprise opportunities based upon natural resource use. The policy addresses the requirement to promote sustainable development and the sustainable use of natural resources through these statutes as instruments of policy.
10. The underlying principle in this policy is that the objectives of the Acts are best achieved by efforts to promote voluntary compliance, while maximum efforts to ensure enforcement are to be focussed on those who do not respond to the drive toward compliance.
11. Both the National Forests Act and the National Veld and Forest Fire Act contain certain prescriptive elements, as well as the statutory frameworks that enable relevant role players on their own, collectively, or together with Government to meet reasonable minimum standards or to make the improvements appropriately needed in their activities to comply with the law. It is this blend of statutory prescription and statutory enablement that makes it especially important for the Department to have good policy to support adequate compliance with the Acts, with the necessary enforcement of the minimum prescriptive standards, such as the provisions for the promotion of sustainable forest management in the National Forests Act.

12. Both Acts provide for the local organisation and subsequent statutory recognition of community-based organisations for achieving locally-agreed norms and standards of natural resources management, such as through community forestry agreements in the National Forests Act, and Fire Protection Associations in the National Veld and Forest Fire Act. In this respect, there is an intersection between their provisions and those in the Communal Land Rights Act, in respect of community rules which has implications for compliance and enforcement of the two Acts.

The National Forests Act

13. The purposes of the National Forests Act are to:
- (a) promote the sustainable management and development of forests for the benefit of all;
 - (b) create the conditions necessary to restructure forestry in State forests;
 - (c) provide special measures for the protection of certain forests and trees;
 - (d) promote the sustainable use of forests for environmental, economic, educational, recreational, cultural, health and spiritual purposes;
 - (e) promote community forestry;
 - (f) promote greater participation in all aspects of forestry and the forest products industry by persons disadvantaged by unfair discrimination.
14. The Act places obligations on two parties, broadly speaking, i.e.
- (a) owners of land with forest resources, or their forest managers or other agents, and
 - (b) citizens at large, who may use or otherwise benefit from forest resources.
15. While the provisions of the Act are in many cases confined to State forests, such provision may be extended to private land where appropriate. This is through sections 8(c) regarding protected areas, section 12 on protected trees, section 17(4), which allows the Minister to declare a controlled forest where needed to prevent or reverse forest destruction, and through section 21, to promote the voluntary grant of access to forests other than State forests (in which case those enjoying access are subject to the rules of access). These provisions allow the promotion of the objects of the Act under wide circumstances.
16. The Department is concerned principally about the need for achieving compliance with the Act's provisions regarding the protection of forests and trees and the provisions regarding sustainable use, both of which in turn affect the promotion of community forestry. This is because (a) forests continue to decline, and indeed some have been entirely destroyed during the past decade (b) the emergence and growth of the commercial trade in non-timber forest products, such as rare species, rare timbers, and traditional medicines, places unprecedented pressure on natural forests and (c) organised criminals have emerged to profit from the trade in forest products and the exploitation of forest-based customs, and this has created lawless conditions in and around many forests.
17. Destruction of natural forests occurs because of weak implementation of provisions in the Act prohibiting the destruction of natural forests as well as weak implementation of the Act as well as weak implementation of other statutes, such as integrated environmental management in terms of the Environmental Conservation Act, e.g. in coastal developments.
18. The extent and condition of woodlands continue to deteriorate, largely because of unsanctioned conversion to other land uses and commercial trade, such as in fuelwood, but also because of the continued pressure on natural resources that comes from rural poverty. Although the National Forests Act is not the most important statute through which woodlands are protected, its judicious enforcement may contribute substantially to woodland protection, for example, through the provisions on protected trees and the

requirements for sustainable forest management. The loss of woodland resources in particular requires application of the Act in concert with other statutes

19. Plantation forests experience problems as a consequence of inadequate enforcement of the law, mainly through illegal land invasions, timber theft and diverse consequences of trespass. The challenge in plantation forestry centres on the deployment of measures to promote sustainable forest management.
20. Trees of national importance are threatened by developments and commercial and subsistence use and particularly weak implementation of the Act outside protected areas.
21. The National Forests Act was drafted at the time of the emergence of new environmental legislation, such as the National Environmental Management Act, of agriculture statutes, the National Water Act, and international obligations arising from Agenda 21. It therefore forms part of a more or less coherent body of national law affecting the sustainable management of natural resources, and must be implemented in concert with the other elements of this body of law. However, achieving proper compliance with the Act requires also that sister statutes take proper account of its provisions.

The National Veld and Forest Fire Act

22. The purpose of the National Veld and Forest Fire Act is to prevent and combat veld, forest and mountain fires throughout the Republic. It provides for a variety of institutions, methods and practices for achieving the purpose.
23. Like for the National Forests Act, it is important to note that the Act places obligations on two parties, broadly speaking, i.e.
 - (a) owners of land on which there is a risk of veldfires, and
 - (b) citizens at large, who may affect the risk of veldfires.
24. The Department finds that the level of veldfire risk in rural South Africa in grasslands, woodlands and fynbos biomes has escalated to the point that it affects investment decisions in rural development, and is causing some landowners to withdraw from fire-prone land uses such as forestry. The situation causes a substantial problem for rural household security. In addition, maintenance of inappropriate veldfire regimes in these biomes, caused in part by inadequate compliance with the law, threatens biodiversity.
25. The Department recognises that achieving proper compliance with the provisions of the National Veld and Forest Fire Act by landowners and citizens at large will contribute substantially to the reduction of rural veldfire risk.
26. Like the National Forests Act, the National Veld and Forest Fire Act was drafted at the time taking account other relevant law, such as the Fire Brigades Act, and new municipal legislation, as well as the provisions of the Conservation of Agricultural Resources Act and other relevant natural resources and environmental legislation. It therefore forms part of a more or less coherent body of national law affecting veldfires and the sustainable management of natural resources, and must be implemented in concert with the other elements of this body of law.

Conclusion

27. Seven years after the Acts were passed by Parliament, there has been substantial progress in applying their provisions. However, there is ample evidence that these laws do not yet have their desired effect. The Department is satisfied that these Acts are appropriate and necessary, but is not yet happy that compliance is adequate, and is especially concerned that measures are needed now to reinforce the gains achieved so far, and to establish a regime that will assure continued compliance in the future.

THE CURRENT SITUATION, ITS PROBLEMS AND OPPORTUNITIES

Implementing forest and veldfire law in South Africa: the natural environment

28. Because of the size of the country and the great diversity of its natural environments, the task of developing and implementing forest and veldfire law in South Africa faces special challenges. These challenges vary according to type of forest and veld. These kinds of environmental conditions require strategies for legal compliance that are designed to accommodate environmental variation.
29. By law, South Africa recognises a diverse range of types of forest resource to which the National Forests Act applies. The Act includes within its scope natural forests, which are forests with closed canopies, woodlands, i.e. forests with scattered trees, and plantation forests; the latter defined to exclude orchards. These forest types extend over 20-30 million hectares of the country.
30. Natural forests present a special problem. Their total area is small, only about 600,000 hectares, but there are many of these forests, possibly thousands. It is only in the south, between George and Humansdorp, that natural forests are extensive. Outside protected areas, hundreds of forests and protected trees are scattered over both communal and private land.
31. Each forest, however small, is a significant and important reservoir of biodiversity. Forest biodiversity is invariably used locally for medicinal, cultural and other purposes, often forming a vital part of the livelihoods of poor rural households. Forest biodiversity also has current and future commercial and subsistence value. The same biodiversity however is also important nationally and internationally and must be conserved for the enjoyment and utilisation by future generations.
32. The larger proportion of natural forest area is included within protected areas. This special status however not protected them from depredation and degradation. Some forests in protected areas have been severely degraded, if not entirely destroyed.
33. Goods that were once used for subsistence purposes by local communities are now traded in city markets, as well as internationally with some rare species (such as the Cape parrot) being traded illegally and forming part of organised criminal activities.
34. Criminal activities in forests are a threat to local communities as they are drawn into criminality, threatened by violent and armed offenders and excluded the opportunity to use and access forests.
35. Most natural forests occur within the region of high and extreme veldfire risk.
36. The factors causing destruction or degradation of natural forests are thus diverse, and the risks to natural forests vary markedly according to location, size, and the local history of administration and management. Recently, coastal forests have begun to face new pressures, with accelerated investment in property and resort development. In addition, the effects on isolated forests as global change sets in are difficult to predict, and likely to aggravate the effects of human activity.
37. These patterns are a special challenge to achieving compliance with the National Forests Act, especially since the forests almost invariably, even within urban area such as Cape Town and Durban, are adjacent to poor communities, people who use the resources as part of their livelihoods strategies.
38. Woodlands are extensive, with an area of 20 to 30 million hectares. Most of this land is in private ownership, though a large fraction is on communal land. Factors of woodland destruction have been noted above. Most if not all woodlands occur within the regions of high and extreme veldfire risk.
39. The greatest area of the about 1.5 million hectares of plantation forest is in private ownership, or managed on behalf of the state by private enterprise, and is well managed

and protected. Some factors threatening plantation forests have been noted above. Nevertheless, in this type, the principal regulatory challenge is to promote sustainable forest management, and here, the main force has been the market-based voluntary instrument of forest certification, now supported by the provisions on sustainable forest management in the National Forests Act. Nevertheless, all plantation forests occur within the regions of high and extreme veldfire risk and the resource suffers unacceptably from losses to veldfire. In addition, pests and diseases are an important latent threat, requiring various controls. Finally, small plantations, mostly required by rural communities for local commodity needs, are especially vulnerable to destruction.

40. It is an additional concern for government that State plantation assets that must yet be transferred to external agents for commercial management, within a strategic package aimed simultaneously at proper growth of the forest industry in South Africa and broad-based black economic empowerment, are too frequently damaged by fire, which contributes to reduced sustainability. Most important, is the transfer of the so-called Category B and C plantations that are essential for the emerging Charter for broad-based black economic empowerment in the forest sector. These assets must be properly protected and developed to allow their full potential to be secured.
41. Regarding veldfires, 70% of South Africa is exposed to medium to extreme veldfire risk. Most rural people live in this region, and most rural economic output comes from this region. It also harbours most of South Africa's biodiversity. Managing veldfires in this region requires the promotion of integrated veldfire management, a skilled blend of ecology and emergency management.

The social and institutional environment

42. The Department needs to consider the consequence of deploying and enforcing law and the long-standing distinction between communal land and private land. Though substantial areas of forest resource are on State land, most are not. Within the area of the former homelands, the region of communal land rights, local communities retained their underlying rights to forest land, even if demarcated as State forest.
43. Forest administration has a complex history, where the setting aside of protected areas in State forests may usually have been through a reasonable degree of negotiation and agreement, with a more or less divergent evolution of local practices for law enforcement. However, from the onset of the apartheid era, management and law enforcement became progressively more conflictual. Evidence is that during the period of homeland administration, conflict deepened and the forest authorities became conflictual with the community in many cases. In many cases, people have adopted local regulatory arrangements into custom, and have expectations that their needs will be addressed.
44. This history must be understood locally within the context to local strategies for achieving compliance with the law.
45. It is also in the former homelands that traditional courts have previously played a role in the enforcement of local customary law with respect to forests and veldfires (see below). Areas with communal land coincide with traditional institutions, including customary courts. In these areas, some Departmental officials have preferred to take transgressors of forest law to the customary court, because of familiarity, or an assurance of swift justice. However, as confirmed by the Customary Courts Bill and the recent report of the South African Law Commission on customary courts, these courts play a role in the management and protection of natural resources, except where statutorily assigned otherwise. The limitations of these courts are that they will serve each only in limited areas (where customary law applied historically), and will hear only cases of small misdemeanours (less than a Category 4 offence in the National Forests Act, for example; the suggested

maximum fine is R500). Some customary courts do have jurisdiction over certain aspects of veldfires within their areas of jurisdiction, but aside from this these courts have no jurisdiction over forest and veldfire law, and can only receive this by statute, so that there is now a conflict between practice and policy that needs urgent resolution. The Department's view is to await the resolution on the Customary Courts Bill before deciding on the role customary courts should play in the enforcement of forest and fire offences.

46. In rural areas there is also the aggravating problem that people have poor access to security and to justice, since people often do not have access to police stations, the courts, and legal professionals. These institutions, nationally, have limited capacity and are often not capacitated or motivated to deal with forest and fire offences that are regarded less serious. In general, SA Police Services and the judicial system in South Africa are still being transformed after democracy, and are often still poorly capacitated and unable to assist immediately in promoting compliance with the Acts. There are many shortcomings that arise from this situation, encountered everywhere in rural South Africa.
47. In particular, both police and prosecutors are unfamiliar with the Acts, and with the particulars of the natural and social environment that determines how they are interpreted, applied and enforced. They need detailed guidance and training in this respect.
48. The general public, for historic political reasons as well as because of the huge scope of new policy and law in South Africa, is generally ignorant of the Acts and the policies they support. An uninformed and unaware public greatly limits compliance of these laws. Poor rural communities are usually very difficult to reach by means of usual communication and education materials. In addition, in the environmental field, officials, environmental practitioners, and developers are mostly unaware of the Acts and how they affect their interpretation and application of environmental law.

Organisational issues: the Department

49. All spheres of government as well as organisations in the private sector and in civil society play important roles in achieving compliance with the Acts.
50. For both Acts, the Constitutional competency for their implementation extends at least in some degree across all three spheres of government, but proper coordination among these three spheres, though emerging, is still not sufficient. The Department as lead agent is obviously the most important institutional factor affecting progress in this field.
51. The Department is still in transformation, a process that began more than 10 years ago. The most important factor is that it is transferring the management of many State forests to third parties, as lessees, provincial environmental departments, communities or otherwise, and this affects its capacity and options for promoting compliance with the law. This transfer process is likely to continue for several more years.
52. Meanwhile, the Department has embarked upon what is now an advanced programme of managed change. The design of its organisation, its business processes, and its capacity are being reshaped for its new role. This process will take another several years.
53. The Department has maintained a coherent and integrated approach to the strategic implementation of the Acts, supported by explanatory material, training, business process management, and information management for monitoring, evaluation and improvement.
54. In addition, the Department has identified over 800 members of staff as Forest Officers, and delegated the powers of the National Forests Act to them (and through this, the powers of the National Veld and Forest Fire Act too).
55. These officials are stationed mainly in regions where there is a high concentration of natural forests and plantations. Relatively few are stationed in the woodlands regions.
56. However, the qualification levels of these officers vary greatly, from, little to no schooling, to post-graduate degrees. Some are unskilled Forest Guards, some are graduate forest

managers. The Department has yet to capacitate and organise this force properly, though this is in process through training and skills development programmes. Assignment of roles and responsibilities is still to be done so that Forest Officers have duties appropriate to the competence levels, and reporting lines and relationships are clear. Though this is a large force, most members are not yet competent in the Acts, their interpretation and application, despite training. Forest officers are not yet adequately informed of law affecting such matters as arrest and children's' rights, and are not sufficiently educated to master the complexity of legal interpretation on the job.

57. The Department intends delegating the role of Forest Officer to the employees of third-party agents, or such as lessees or assignees such as SANPARKS, or designating classes of conservation officers as forest officers, who would also mostly require substantial development to play the role competently. These third-party agents will be trained on the National Forest Act and the National Veld and Forest Fire Act and the enforcement of these Acts.
58. The Department and its agents, in managing State forests, have in some cases hired security firms on the State forests and employees of these may sometimes need to exercise powers under the National Forests Act and will thus be appointed as Forest Officers.
59. In the field, Forest Officers are at great hazard in their duties from criminals, as well as sectoral community interests. They are unarmed, and unable to protect themselves. This greatly inhibits their work.
60. Regarding veldfire management, the Department has facilitated a process of establishing over 120 Fire Protection Associations throughout fire-prone regions, each with a Fire Protection Officer as enforcer of the law, and with the concurrence if not the support of government fire services and disaster managers, thus extending the resource available for promote legal compliance.
61. Many of these Fire Protection Officers must still be appointed and trained on the legal implications of their powers to enforce. The National Veld and Forest Fire Act supports the appointment of the local Chief Fire Officer as the Fire Protection Officers.
62. Fire Protection Associations and Fire Protection Officers are in dire need for administrative, technical assistance and financial assistance (in line with the *Policy on Exemptions Financial Support to Fire Protection Associations*) and to set up structures that are essential for the effective enforcement of the NV&FFA.

Features of current law enforcement

63. Regarding forests, the Department finds that, emerging as it has through the merger of diverse administrations from the apartheid era, there is marked inconsistency in the way that law is enforced and legal compliance promoted.
64. For example, overall, the process has been and still is arbitrary. Patrols to control access are often poorly planned or worse. Forest Guards are left without guidance and supervision. Enforcement lacks strategy. Trivial offences are addressed, and major offences overlooked. Forest Officers are exposed to bribery and other undue forces of influence. They are often unprotected and fearful.
65. There is currently weak coordination between the Department's officers and the members of the security and judicial system. Forensic investigations of suspected crimes are often not or poorly conducted. Cases that come to court often fail for lack of good evidence or because the cases are poorly prepared.
66. SAPS, the prosecution authority and courts are ill aware of the two Acts and need to be trained on the Acts and informed about the magnitude of forest and fire offences.

67. The Department is addressing this situation, by gathering information needed for a strategic approach, by regularising the administration e.g. through proper delegations, and through training. However, this is work in progress and much remains to be done.
68. Regarding veldfires, since the law is new and the Fire Protection Associations still in formation (thus Fire Protection Officers have still to be appointed), the main problem has been to roll out institutionalisation of the law as rapidly as possible, and to train Forest Officers, municipal staff, and candidate Fire Protection Officers in the law and its application. Good progress has been achieved in doing this.
69. Much compliance with the provisions of the National Veld and Forest Fire Act will be achieved through the work and rules of Fire Protection Associations, of which there will probably be several hundred in South Africa (about 40 are registered or close to registration). Compliance therefore depends heavily on this institutional drive.
70. By analogy, much compliance with the National Forests Act could be achieved by the deployment of participatory forest management, and the establishment of Community Forestry Agreements or analogous instruments. The Department feels that better progress is needed in this regard.

Current initiatives to improve compliance and law enforcement

71. For both Acts, the Department has initiated a concerted programme of training and communication and awareness to prepare institutions and the public at large to move toward compliance with the provisions of the Acts. Communication has reached a wide though targeted audience, and has focused carefully on the Acts and how people may respond to their provisions. This programme has been directed at the community level, as well as at agencies and the wider public. It has been supported with national and regional extension initiatives, regarding for example participative forest management as well as the formation of Fire Protection Associations. It has been coupled with mobilising sector structures such as Forestry SA and AgriSA, through direct intervention as well as through the National Forests Advisory Council.
72. In addition, the Department has initiated a collaborative initiative with the security and justice arms of government and other stakeholders concerned with the enforcement of the provisions in the National Veld and Forest Fire Act, through a Interdepartmental Compliance and Enforcement Committee. This Committee has progress on a joint plan for communication and awareness and training. It still has to show a qualitative improvement in the coordination of efforts among these agencies to improve enforcement.
73. Beyond this initiative, the Department has also recently trained all Forest Officers in the provisions of both Acts and in the procedures to follow in enforcement, with the emphasis on rights-based enforcement. The policy contained in this document is also the outcome of intensive project involving extensive consultation within and beyond the Department, and which will also yield guidelines for the implementation of policy.

POLICY OBJECTIVES

74. The overall objective of the policy is to achieve compliance with the objectives of and provisions in these Acts. This policy thus goes beyond the matter of enforcement, which is the matter of taking action in the event of an offence against these laws. For this reason, the policy is a wide-ranging but integral part of overall government policy in respect of forests and veldfires.
75. The policy promotes and facilitates continuing compliance of the Acts in accordance with the principles of the *White Paper on Sustainable Forest Development in South Africa* and the *Vision for Forestry* to deal with enforcement as a relationship between people and forest resources.
76. The specific objectives of the policy are to:
 - (a) Eliminate unwanted enforcement practices and transform existing command and control styled enforcement to a holistic approach for compliance.
 - (b) Foster a community culture of positive action, consultation and cooperation with the Department and other enforcement agents.
 - (c) Ensure that people who benefit from or are affected by the enforcement of the Acts have the opportunity to participate on a fair and equitable basis.
 - (d) Promote positive incentives to provide a supportive enabling environment for more effective compliance of the Acts and the involvement of local communities and stakeholders.
 - (e) Assist to align compliance and enforcement with the new Forestry Vision and associated institutional restructuring and the Department's new regulatory role.

POLICY OPTIONS

77. While affirming the necessity for rapid progress toward the objective set out above, the Department recognises that there are several real alternatives for policies to achieve this goal.
78. These are:
 - (a) Withdrawal
 - (b) Zero tolerance,
 - (c) Continuing in the present way, and
 - (d) Strategic and cooperative enforcement

Withdrawal

79. The administration of the Acts could be transferred to other organs of state, or the laws could be repealed and replaced with new statutes.
80. In the case of the National Forests Act, part of its objectives could be achieved through the National Environmental Management Act and its subordinate statutes (the Biodiversity Act and the Protected Areas Act), while the provisions regarding sustainable forest management could be subsumed as regulations under one or other of these statutes.
81. The objects of the National Veld and Forest Fire Act could be achieved through regulations under the Fire Brigade Services Act, or a new Act, together with reliance upon the National Environmental Management Act and its subordinate Biodiversity Act.
82. Environmental inspectors, appointed in terms of the National Environmental Management Act, could be empowered to enforce the law, rather than forest officers.
83. The Department has rejected this option, for the following reasons:

- (a) This option would simply transfer the burden to another agency, since the need to achieve the policy objective remains
- (b) The two Acts are statutes of great integrity, developed in the full context of the Constitution and South Africa's current policy imperatives, and would be very difficult and costly to replace; the legislature would not countenance repeal.
- (c) For the National Veld and Forest Fire Act, the Department commissioned a study of alternative arrangements, which affirmed the need for the Department to continue as administrator; the report entitled *Placement of the Fire Function: Custodianship of South Africa's National Veld and Forest Fire Act* contains full reasons for continuing with the present arrangements
- (d) Finally and most important, the Department is acutely aware of the ongoing degradation of veld and forest resources in the country, and how these Acts are intended to contribute to remedying this situation; to withdraw from the task of implementing the Acts now would create a hiatus and a hesitancy among all role-players that would irresponsibly aggravate a hazardous situation.

Zero tolerance

- 84. The option of zero tolerance would involve full enforcement of all prescriptive provisions in both Acts everywhere by an uncompromising application of the law. Zero tolerance allows for absolutely no levels of tolerance or compromise for violators of the law in question. Punishment under such policies is unwaveringly severe.
- 85. The Department cannot entertain this option since it is fully aware of the fact that risks in forest management and in veldfire management vary greatly across the country and from place to place. There are some situations where risk is negligible, where little intervention is needed, for example.
- 86. Government has in any event committed itself to a policy that is sensitive to the need to recognise people's underlying rights to the use of natural resources within a managed framework, through, for example, the exemption to the National Forests Act, which provides for the use of forest resources for household purposes by neighbouring communities. That is, government has rejected a general zero-tolerance approach to achieving statutory compliance.

Continuing in the present way

- 87. As outlined above, the Department has taken several steps to improve the conditions required for achieving compliance with the Acts, and these continue with renewed force.
- 88. Time is needed for these initiatives to have real effect. It is likely therefore that the policy objective will be achieved by simply continuing with patience in the present way.
- 89. However, the Department is not satisfied that this is sufficient, given the general evidence of unacceptable risk to our natural resources, the barriers to poverty alleviation and development that exist in this situation, and frequent evidence of their continued decline. A stronger effort is needed, especially in the light of the fact that this will involve relatively small additional cost while leveraging great and pervasive benefits.
- 90. In addition, the Department is fully aware of the fact that few resources are available to achieve compliance with the two Acts, that public expense must be contained, and that the benefits of regulation must be achieved at acceptable cost. All of this means that the current effort is not adequate, especially in respect of achieving the efficiency and effectiveness that may be achieved through improved cooperative government.

Strategic and cooperative enforcement

91. The Department has chosen the option of strengthening the present partnership approach through cooperative governance, cooperation agreements and community-based natural resources management, while introducing a robust strategy based upon strategic risk management and strategic crime prevention and law enforcement.
92. In recognising the current status of non-compliance with the two Acts and its inability to enforce the law according to the legislative requirements, the Department is planning to implement a more effective and holistic compliance and enforcement model.
93. A holistic approach to enforcement will encourage compliance of the Acts through a combination of prevention, detection and correction. Enforcement activities will be comprehensive and focused and guided by a strategic risk analysis of the consequences and likelihood rating of particular offences.
94. Where the Department has enforcement responsibilities, it will encourage liaison and cooperation with other compliance and enforcement agencies at National, Provincial and Local Authority Level. The Department will also enter into formal agreements for joint and allocated enforcement with relevant compliance and enforcement agencies.
95. To ensure enforcement in leased and assigned state forests, enforcement responsibilities will also be delegated to the new managers of these forest and their staff will be appointment as forest officers..
96. Officials from other government agencies, as well as suitable members of communities and the public at large will also be appointed as forest officers, to ensure enforcement in especially areas where there are no Departmental officials appointed as Forest Officers.
97. All Forest officers will however be required to be sufficiently trained.

The benefits and costs of the preferred option

98. The greatest benefit of the preferred option will be improved compliance with the Acts. This will translate into reversed destruction of forest resources and greater support to the integrity of forest ecosystems. The rights of forest-using communities will also be supported and upheld. The environmental, social and economic risk of veldfires will also be minimised.
99. All these benefits will be gained at costs that are justified by the public benefits achieved.
100. The new model does not have any immediate financial implications for the Department but is relying on existing resources and initiatives by improving, focusing and strategising its compliance and enforcement system and activities.
101. The model ensures effective implementation of the two Acts by promoting optimal and effective use of resources in a coordinated manner.
102. To achieve actual change in behaviour, the Department will however need to devote resources to encourage compliance. The Department will also need to ensure that there is consequences if the requirements of the two Acts are violated. Without this commitment to enforce the law, the Department will loose credibility and leverage to achieve more widespread compliance, signalling to the public and landowners that compliance is not a priority.

The policy elements in strategic and cooperative enforcement

General

103. Overall, the Department takes the view that the greater progress in achieving compliance with the objectives of both Acts will come from an informed and aware

stakeholder community, including its own employees. The Department therefore places greatest emphasis on the gathering of appropriate information through monitoring, the professional evaluation and assessment of this information, proper policy response to its contents, and wide and effective communication to stakeholders.

104. The policy of the Department is to enforce the prescribed minimum requirements of both Acts wherever the risk to a given natural resource, forest resources in the case of the National Forests Act, but all rural assets in the case of the National Veld and Forest Fire Act, justifies the cost and motivation of such enforcement. On State forests, whether managed by the Department or not, the enforcement strategy to be applied will be determined by the policy and forest management plan for the specific State forest, based upon local risk assessment.
105. Enforcement will be through a body of Forest Officers and Fire Protection Officers, employed by the Department or otherwise, working in close cooperation with the SA Police Service, the courts, as well Chief Fire Officers (in terms of the Fire Brigade Services Act) in the case of veldfires. The Department will ensure that each Forest Officer and Fire Protection Officer is competent to exercise his or her particular duties, but recognises that officers' abilities vary and the powers delegated to each officer must be appropriate to his or her level of competence.
106. In the case of Forest Officers in its own employ, the Department will ensure that the Forest Officers in any given region and Forest Management Area are organised in such a way that (a) there is no conflict between enforcement roles and "extension" roles and (b) Forest Officers exercise powers appropriate to their level of competence, under supervision and guidance of Forest Officers with higher powers.
107. The Department will not intervene directly other than on State forests (i.e. not on private or communal land) except to enforce those minimum statutory standards that are justified by a positive risk: benefit ratio relevant to a particular standard in a particular location. It follows that enforcement will be based upon proper risk assessment.
108. Where there is a need in a particular case or location to achieve standards higher than the minimum, the Department will promote and support a balance or a combination of incentives, self-regulation, and co-regulation to achieve these higher standards, as well as the institutionalisation of community-based natural resources management, wherever the costs involved in such organisation are justified by the anticipated improvements.
109. Given these constraints, the Department will seek to ensure that government and its partners achieve the necessary capacity to promote the desired compliance with the Acts through the combination of effective cooperative governance and capacity building.

Cooperative enforcement

110. Cooperative governance and cooperative enforcement plays an important role in ensuring that the objectives of the two Acts are achieved. The Department cannot work in isolation of other Departments or communities with strong interest and stake in ensuring compliance with the two Acts. Stakeholders need to work together to achieve the greatest results.
111. The Department needs to work together with International, National, Provincial and Local level stakeholders.
112. The Department therefore needs to create and/or strengthen its relationships and partnerships through putting in place and effectively participating in measures that facilitate cooperative governance in enforcement. This includes cooperative governance protocols or agreements and Compliance and Enforcement Committees with communities and other government agencies.

113. The establishment of Cooperative governance protocols or agreements and Compliance and Enforcement Committees have clear benefits in that it will create a clearer understanding of the duties and responsibilities of stakeholders, avoid duplication of efforts and resources and help in streamlining regulatory and other business processes.

Strategic risk management

114. The Department will pursue the policy goal within a national framework of strategic risk management.
115. The approach is directly linked with poverty eradication and development, in that it is the livelihoods assets of households and communities that are at risk, while inclusion of environmental and economic assets, on-site and off-site, allows for the management of public-good assets that may be at risk.
116. In doing this, the Department will adhere to international standards in risk assessment and management, to ensure the maximum potential for interagency coordination that lies in accepted standards. In this standard, risk is defined as the combination of probability of an event and its consequence, the seriousness of an offence. The assessment of the seriousness of an offence is based on a number of factors including the offence categories, the environmental sensitivity, the actual damage and different social and economic factors.
117. The standard approach allows for risk management through the assignment of risk management strategies to any asset at risk. Thus, the procedure is within any defined area to identify the assets of concern, the factors that motivate compliance and encourage non-compliance, the risk description for each, and the level or category of risk for each asset. The category or level of risk allows for priority planning, and the risk description allows for the assignment of a risk management strategy to each relevant asset. Risk is further examined within a framework of social, economic, and environmental assets and risk factors, both on-site and off-site.
118. For veldfires, the requirements for risk assessment and management at the local level are set out in a directive entitled *Guide to Fire Protection Associations. Plans for The Implementation of Section 5 of The National Veld and Forest Fire Act: Duties of Fire Protection Associations in Terms of Regulation 6*.
119. For veldfires, the Department has developed a map and accompanying decedents, which classify SA's municipalities by assessed veldfire risk, using available ecological and veldfire information. This assessment gives the framework within which the National Veld and Forest Fire Act is to be implemented and prioritises its implementation. It avoids the problem of attempting to implement the Act where there is no or low veldfire risk. At the local level, the risk management standard mentioned above guides the business plans and their veldfire management strategies to be employed by Fire Protection Associations.
120. The Department will follow an analogous approach with respect to forest-resource assets. It will develop a municipal-level assessment of risk to forest assets as a national framework, require this to guide Provincial Growth and Development Strategies and their subordinate environmental management frameworks, as well as the environmental-risk components required in IDP's. For forest management units, the Department will require a risk assessment and management plan for each unit within the system of State forests, whether managed by itself or on its behalf by third parties.
121. This system of strategic risk management will guide all elements of the policy that follow below.

Strategic crime prevention and law enforcement

122. The Department will develop a model for structural enforcement based on strategic risk management, where national goals and priorities as well as local situational analyses will determine strategic compliance and enforcement activities and strategies that take into account the need for specially designed enforcement interventions, matching not only to the particular offence but also to the motivation of the offender.
123. The development of enforcement strategies will be based on a clear understanding of the macro and specific objectives of the programme so that all activities and assessments can be measured against the objectives.
124. Part of the development of enforcement strategies is to prioritise enforcement. Priorities will be established based on the seriousness and risk of the particular offence. When determining what strategies should receive priority attention, the Department will estimate what illegal actions are the most important and the impact they would have on preventing future offences.
125. The Department has at a national level set a number of key strategic priorities for the medium term.
 - (a) The first is to combat serious and violent crimes, for which a strategy will be developed to identify serious offences.
 - (b) The second to focus strategies to reduce incidents of organised crime, focusing on organised criminal gangs and the person higher up in the hierarchy. The Department intends to secure safety and security in high crime areas and priority forests and will develop a model to identify crime enforcement hot spots.
 - (c) The third is to improve service delivery by focusing delivery and to improve the prosecution of forest and fire offences through better cooperation and knowledge of the two Acts
126. For forest management units, Clusters will develop local enforcement priorities based on the particular local circumstances of criminal activities. These priorities will reflect national prioritisations and circumstances.
127. Enforcement strategies will give clear guidance to enforcing Forest Officers and Fire Protection Officers on how to react to different situations and which enforcement mechanism are the most appropriate in different situations.
128. The amount of available financial and human resources will influence enforcement strategies. In view of this it is important to calculate the likely costs and time associated with the implementation of the strategy. Enforcement strategies may need to be adjusted or downsized to reflect optimised performance within identified constraints.

Compliance and crime prevention

129. The Department will promote and secure compliance of the two Acts by encouraging and facilitating legal use, monitor compliance and respond to situations of non-compliance in a positive and adequate manner.
130. Offences will be prevented either by *influencing the offender through crime preventative programmes* before the criminal event, by *intervening* during the event or by *reacting* after the event to deter others from committing the same offence. Compliance will be improved by implementing a mix of preventative and enforcement-strengthening measures together.
131. The Department recognises that a prerequisite condition for achieving compliance among all relevant actors with the provisions of both Acts is that all relevant actors must be fully aware of the need and imperative for sustainable natural resources management, the

provisions within each Act and the meaning of these provisions, as well as being aware and adequately informed of how compliance may be achieved. Similarly, the effectiveness, efficiency, and cost-benefit ratio of an enforcement policy depend equally on adequate information and education.

132. In addition, the Department recognises the benefits, at low cost, that come from the forces of neighbourly moral suasion within communities, and from various voluntary, self-regulatory instruments that promote desired performance.
133. Accordingly, the Department will base its policy for achieving compliance and enforcement upon a second element of strategy, focused upon the components set out below.

134. Communication, awareness, information, and education

- (a) The Department will continue with its current programme of delivering the content and meaning of the Acts to all relevant stakeholders through regular focused bulletins as well as accessible training materials delivered as part of its capacity building policy and strategy to all relevant actors through appropriate and certified modules and service providers.
- (b) As part of this, the Department will partner with interested and committed entities in the training sector to ensure effective delivery of education and training in this field.
- (c) Its own forest officers as well as those employed in other agencies will receive similar education and information and will be available to reinforce the contents of this information among all relevant actors.

135. Community participation and community responsibility: community-based natural resources management, participatory forestry, and Fire Protection Associations

- (a) The Department will continue to actively promote within the risk assessment framework the establishment of community-based institutions for achieving compliance with the Acts, as exemplified by Fire Protection Associations and the parties to Community Forestry Agreements. It will promote the adoption of rules by these institutions that are in line with accepted custom as well as best-practice standards and which are cost-effective for local circumstances, and support these organisations by achieving compliance through mutual persuasion, and only failing this, through the judicial system

136. Voluntary self-regulation: Certification

- (a) **Plantation forests:** the Department recognises that in South Africa certification of sustainable forest management through the FSC system has reached its highest penetration among plantation forest industries worldwide and supports and encourages this development; the system of criteria, indicators and standards developed in terms of the National Forests Act through consultation with stakeholders is now being implemented throughout the country and the Department will consult about regulatory requirements with all relevant stakeholders; the Department is fully aware of the fact that certification requires proof of compliance in the FMU with all relevant law and that this is a powerful incentive for forest managers to comply with the Acts; the Department will pursue a similar approach with respect to natural forest and woodlands on State forests managed on its behalf by third parties
- (b) **The timber trade:** the Department will examine ways of ensuring that indigenous timber and secondary products derived from indigenous timber may be certified as originating from sustainably managed forests.

- (c) **Non-timber forest products:** the Department will investigate ways in which the trade in non-timber forest products, especially but not only medicinal plants, may be certified as originating from sustainable managed forests
- (d) **Forest users:** the Department will also investigate ways of promoting compliance with access rules among forest users enjoying access to forests by certification of community-based organisations, clubs and other bodies representing these users, according to accepted codes of practice.

137. Compliance assistance

- (a) The Department recognises that non-compliance of the two Acts sometimes emanates from a lack of understanding of legislative requirements and of lack of capacity to meet the legislative requirements. In such instances, the mechanism that the Department will use to improve compliance is compliance assistance.
- (b) Compliance assistance is ways and methods in which the Department can assist the regulated community to understand what requirements they are expected to meet and how they can meet these requirements. Methods may include activities that are aimed at facilitating or enabling compliance where complying is difficult owing to economic or logistic reasons. These will increase compliance with the law by making legal use easy and attractive.
- (c) The Department will provide skills development and capacity building for forest management institutions. This includes support to the new managers of state forests, especially forests managed under community forestry agreements, and Fire Protection Associations.
- (d) Of most importance, however, is a proactive, sensitive and community-friendly approach that increase co-operation between the Department and the public in promoting an environment of compliance.

138. Early warning and detection

- (a) By detecting offences, the Department intends to prevent a great number of forests and fire related offences. Increased security will ensure that offences are discovered before they have been committed while visible policing and patrolling of forests will discourage crime and deter offenders.

Enforcement

- 139. Strategic enforcement is a way of determining which offences should be prioritised and with which legal interventions. The preferred intervention is based on a hierarchy where the Department will exhaust all possible enforcement alternatives lower down on the scale such as warning and negotiation before resorting to for example criminal prosecution.
- 140. A distinction will be made between criminal, administrative and civil enforcement. Administrative enforcement will be used as the preferred measure. Criminal measures will be applied only when the administrative control is breached or not complied with. Civil enforcement on the other hand will be used as an alternative to or combined with both administrative and criminal enforcement.
- 141. The use of criminal sanctions will be regarded as a last resort and is generally appropriate when the administrative and civil enforcement measures have been exhausted.
- 142. In situations where offences are very serious and carried out for personal profit in wilful disregard of the law and where no deviation will be allowed, a zero tolerance approach will be applied. The Department will also apply a zero tolerance approach for breaches of the law where the impact is serious enough to justify court action.

IMPLEMENTING THE PREFERRED WAY

143. A number of considerations arise in effecting the preferred way of strategic and cooperative enforcement.
144. In order to enable effective implementation of the enforcement strategies, the Department will prepare detailed enforcement plans that set out clear measurable outputs with timelines and deadlines.
145. The first step in implementing the enforcement strategy is to communicate the strategy to all involved stakeholders to ensure that all affected parties are informed both about the content and context of the strategy.
146. Internal capacity building by way of sufficient and trained enforcement staff and adequate administrative support will ensure that the Department can meet demands to enforce the provisions of the Acts.
147. The Department will respond to violations according to the directions given in the enforcement plans on how to respond to the different prioritised offences.
148. It will set out structures for formal cooperation with relevant stakeholders for the sharing of resources and capacity of enforcement whenever possible and enter into formal agreements with suitable agencies for joint operations and delegation to enforce all or specific provisions of the Act to third party enforcement agents. Enforcement staff of these agencies will be appointed as forest officers.
149. The Department will cooperate with relevant state organs, and in particular, the Department of Justice, to ensure that prosecutions are initiated promptly and processed quickly and that harsher scale of penalties are applied for organised and repeat offences. It will explore the feasibility and desirability of alternative sanctions such as community service, the ability of the court to seize the asset used to commit the crime, a penalty based on the value derived to the accused by transgression and withdrawal of permits/licenses.
150. It will monitor compliance of the two Acts by collecting and analysing information on the compliance status of the regulated community to detect and correct violations, provide evidence to support enforcement actions and evaluate the compliance and enforcement strategy.
151. The Department will investigate the justification of a specialised enforcement unit to deal with organised and serious offences. If found justifiable, the special enforcement unit will be adequately trained and equipped to investigate organised and serious offences and to gather information and evidence necessary for prosecutions.
152. The Department will finally take necessary steps to ensure that the compliance and enforcement policy be made into regulations

MONITORING, EVALUATION AND IMPROVEMENT

153. The Department will evaluate the compliance and enforcement policy by feeding back information about the impact of the strategy into the strategic risk management model for enforcement.
154. The evaluation will give an indication on what enforcement actions have been successful and what improvements/changes are necessary in following strategies.
155. The following positive and negative indicators will be used when measuring the success of the compliance and enforcement policy.
156. Positive indicators include:
 - (a) **Reduction of actual damage:** the Department will assess whether proactive enforcement has reduced the actual damage of offences by preventing illegal activities before actual damage has occurred.

- (b) **Reduction of environmentally damaging offences:** the Department will assess whether prioritised enforcement in environmental sensitive areas has reduced the number of illegal activities with serious environmental damage.
 - (c) **Reduction of the number of illegal activities:** the Department will assess whether participation in forests management has increased the respect for the law and incentives to preserve the forest resource for future generations
- 157. Negative indicators include:
 - (a) **Increase in social costs:** the Department will assess whether failure to enforce organised commercial forest resource harvesting has increased the social consequences for communities adjoining state forests in term of increased poverty levels.
 - (b) **Increased incentives;** the Department will assess whether increased and improved enforcement has increase the feeling of exclusion from forests and decrease the incentives to preserve the forest resource.
 - (c) **Increase in illegal activities;** the Department will assess whether an increase in the number of inspections of licences has reduce the number of licence applications and increase the number of illegal (an uncontrolled) activities.
- 158. The analysis of feedback information from the enforcement strategy will ensure consistent and fair programme activities and results. In order to produce feedback on the strategy, the Department will rely on information about compliance and enforcement activities and results.